



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PAUL BETANCES, et al.,

Plaintiffs,

- against -

BRIAN FISCHER, in his capacity as  
Commissioner of the New York State  
Department of Correctional Services (DOCS),  
and in his individual capacity, et al.,

Defendants.  
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11-CV-3200 (RWL)

**ORDER**

**ROBERT W. LEHRBURGER, United States Magistrate Judge.**

On June 10, 2021, the Court held a conference with the parties to discuss issues pertaining to trial, with particular focus on the extent to which the class should or should not be decertified for determination of damages. The specific issue is whether the class should be preserved for trial of general damages on loss of liberty. In her decision certifying the class in this case, Judge Scheindlin endorsed such a trial, while recognizing that the class may then need to be decertified to address individualized damages apart from loss of liberty damages. This Court followed suit in issuing its summary judgment decision in February 2019. More recently, in preparation for trial, Defendants submitted briefing challenging the propriety of determining loss of liberty damages on a class-wide basis. As discussed at the June 10, 2021 conference, the Court would benefit from additional briefing on this issue. Accordingly, the parties shall brief the matter as follows:

The briefing should specifically and directly address the following questions:

1. To what extent can the Court properly proceed to trial on a class-wide basis with respect to determining damages for loss of liberty? What precedent is there for or against such a class trial?

2. What should such a trial consist of with respect to types of evidence, witnesses, and/or argument?

3. What are the appropriate subclasses for such a trial and why?

Although the parties and the Court had anticipated that Defendants would file the opening brief, the Court has further considered that issue and finds that the briefing will be most helpful if Plaintiffs proceed first. Accordingly, Plaintiffs shall file an opening brief by July 22, 2021. Defendants shall file a responding brief by August 23, 2021. Plaintiffs shall file a reply by September 13, 2021.

SO ORDERED.



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ROBERT W. LEHRBURGER  
UNITED STATES MAGISTRATE JUDGE

Dated: June 10, 2021  
New York, New York

Copies transmitted this date to all counsel of record.